

**MINUTES**

**Virginia Soil and Water Conservation Board  
Thursday, May 19, 2005  
Virginia Department of Forestry  
Charlottesville, Virginia**

**Virginia Soil and Water Conservation Board Members Present**

David L. Moyer, Chairman	Joseph H. Maroon
M. Denise Doetzer	Benjamin H. Graham
Susan Taylor Hansen	Granville M. Maitland
W.P. Johnson	Jean R. Packard

**Virginia Soil and Water Conservation Board Members Not Present**

Linda S. Campbell	Robert M. Hall
Richard E. McNear	

**Staff Present**

William G. Browning	David C. Dowling
Michael R. Fletcher	Jack E. Frye
Lee Hill	Tom Robinson
Dianna Sheesley	

**Others**

Carl Garrison, State Forester, Virginia Department of Forestry  
J. Michael Foreman, Virginia Department of Forestry  
Joe Haugh, Ad Hoc Dam Safety Committee  
Lee Frame, Lake of the Woods Association  
Doug Rogers, Lake of the Woods Association  
John Hakola, Lake of the Woods Association  
Robin Knepper, Fredericksburg Free-Lance Star  
Jim Byrne, Virginia Association of Soil and Water Conservation Districts  
Mike Smith, Green Acres Property Owners Association  
Don Cope, Lake of the Woods Association  
Ralph Hollm, Lake of the Woods Association  
John Conrad, Lake Holiday  
David Campbell, Schnabel Engineering  
Chris Allison, Lake Holiday

### **Call to Order**

Mr. Moyer called the meeting to order at 9:36 a.m. At that time there was not a quorum present.

Carl Garrison, the State Forester for the Virginia Department of Forestry, offered greetings and remarks. He noted that the Department has several new initiatives. The Department will be holding a personnel camp for the first time in 16 years. The entire agency will gather at Virginia Tech.

Mr. Garrison said that part of his role was to bring folks closer together and to elevate the status and recognition of the Department of Forestry and Natural Resources as a whole.

The Department is working for recognition of the value of forest resources in the Commonwealth. Part of the strategic plan includes a new forest policy that will be available within the next 30 days.

Mr. Moyer thanked Mr. Garrison for allowing the Board to meet at the Department of Forestry. He noted that as a quorum was not yet present, the agenda would be altered slightly.

### **Director's Report**

Mr. Maroon gave the Director's report.

Mr. Maroon stated that the Department recently had the opportunity to host the House Appropriations Committee at Douthat State Park. The emphasis of this meeting was on State Park and Land Conservation issues.

He also noted that Delegate Callahan, Chair of the Appropriations Committee will be studying funding strategies for Bay cleanup efforts. The Committee includes Senators Chichester and Hawkins as well as Delegates Cox and Lingamfelter. Secretary Murphy and Secretary Bloxom serve as ex-officio members.

Mr. Maroon said that he and Mr. Frye had attended a summit in Ronoake that dealt with exploring alternative solutions for the use of agricultural waste from chicken litter and other animal manures. This was co-sponsored by Virginia Tech, the Virginia State Dairyman's Association and the Chesapeake Bay Foundation.

He noted that he, along with Mr. Frye and Mr. Hill had been in Leesburg to talk about urban issues related to nonpoint pollution. There is not a clear path on what to do in an urban area. There has been much more discussion regarding agriculture.

The public comment for the proposed revisions to the Nutrient Management regulations is now open. A series of hearings are scheduled for Williamsburg, Roanoke, Fredericksburg and Harrisonburg. The hope is to have the new regulations adopted by the fall.

Mr. Maroon shared with the Board information about the “Chesapeake Club” campaign in Northern Virginia. This campaign encourages homeowners to be responsible with the nutrients they apply to their lawns.

Mr. Maitland arrived at this time. Chairman Moyer noted there was still not a quorum.

### **District Study Update**

Mr. Frye gave the District Study Update. A copy of the Study Group May 5, 2005 meeting agenda is attached as Attachment #1.

Mr. Frye reviewed the following handout summarizing the meeting:

### **Changes under consideration** **Ag BMP Cost-Share Program Focus – July 1, 2006**

#### **Topic/Issue**

#### **Nutrient Management Plan Implementation**

Beyond existing financial incentives for plan development, incentives for farmers to contractually commit to implementing a plan for 3 years (?). 6 years (?); perhaps with varying amounts of incentives depending on plan complexity and recommended management activities.

#### **Cover Crop/Conservation Tillage System:**

Establish a combination BMP system with farmer incentives to contractually commit to a 2 or 3 year cover crop/tillage system on their farm. Planting dates, types of cover, degrees of tillage and other factors could mean a menu of incentive options.

#### **“Base Program” Offering a full “menu” or perhaps limited menu of BMP options:**

- BMPs focused on local water quality issues and priorities
- BMPs to address impaired “TMDL” issues

#### **Nutrient Management Plan Implementation – a partial list of what must be addressed and in place to effectively implement a contractual approach:**

- Phosphorus based planning in place
- Appropriate financial incentives (likely to be variable depending on plan complexity and requirements)
- Collaborative plan writing – tying technical recommendations of plan writers to farmer willingness to implement; (with an appropriate financial incentive)

- A Contract Format – to address what period of time, “rules,” allowance for farmer changes in cropping, water complications, etc.
- Farmer record keeping: “self-certification?” forms and reports required (?) – matters best addressed within a contract, but critical issues
- Compliance monitoring – determining how “contracts” will be monitored...what staff will monitor what % of contracts?; if SWCD staff, certification of plan writing is necessary, how will DCR consider supporting this need for SWCD staff expertise?

**Cover Crop/Conservation Tillage System: -- partial list of needs...**

- Development of BMP specifications, (cover – plant variety, options, planting dates, tillage options, residue requirements, harvesting allowances...)
- Appropriate financial incentives
- Collaborative System Development – resolving optimal system recommendations to farmer willingness to implement – with an appropriate financial incentive
- A Contract Format
- Farmer record keeping; “self-certification”
- Compliance monitoring

**Longer term benefits of a diversified incentive program**

**Contracts with farmers for implementing nutrient management plans and cover crop/conservation tillage systems:**

- Provides assurance with BMP implementation for these practices
- Is consistent with Chesapeake Bay Commission recommendations to Bay states
- Enables incremental movement towards meeting certain Bay goals depending on funding availability
- Provides a better basis of explaining Ag BMP actions towards specific goals with predictable annual expenses (...if we want \_\_\_ acres of nutrient management plans under contract and \_\_\_ acres of cover crop/conservation tillage under contract it will cost \$\_\_\_ annually)

**Retaining a “base level” Ag BMP Cost-Share Program** with a variety of available BMPs enables SWCDs to address more local water quality issues – particularly actions to address water quality impairments (TMDLs) that are predominantly fecal impairments with needs for BMPs that include manure storage structures, livestock exclusion, alternative watering systems, etc...

This more diverse system of BMP implementation could enable each SWCD to have an annual Cost-Share program allocation comprised of 3 specific “pots” of dollars:

\$ \_\_\_\_\_ Nutrient Management Plan Contractual Incentives  
\$ \_\_\_\_\_ Cover Crop/Conservation Tillage System Contractual Incentives  
\$ \_\_\_\_\_ Base Program funding for all other available BMPs

Mr. Frye noted that the committee is planning two additional meetings before the end of the year.

Mr. Moyer noted that with the arrivals of Mr. Johnson and Mr. Graham there was now a quorum present.

**Minutes of the March 17, 2005**

MOTION: Ms. Packard moved that the minutes of the March 17, 2005 meeting of the Virginia Soil and Water Conservation Board be approved as submitted.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

**Actions Related to Erosion and Sediment Control Laws**

Mr. Moyer called on Mr. Hill to present the actions related to Erosion and Sediment Control Laws.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the proposed Alternative Inspection Program for Patrick County as being consistent with the requirements of the Erosion and Sediment Control Law and Regulations and that the Board request DCR staff to monitor the implementation of the alternative program by the County to ensure compliance.

SECOND: Mr. Johnson

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board receive the staff update and recommendation regarding the proposed Alternative Inspection Program for Rappahannock County and that the Board concur with the staff recommendation and accept

Rappahannock County's proposed Alternative Inspection Program for review and future action at the next Board meeting.

SECOND: Ms. Hansen

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the request by Columbia/NiSource Gas Transmission for variances to Minimum Standard 16.a and Minimum Standard 16.b. The Board concurs with staff recommendations regarding the variance requests and the responses to the variances are as follows:

1. Minimum Standard 16.a. The project may have more than 500 linear feet of trench length open at one time provided all open trenches in excess of 500 feet are adequately backfilled, seeded and mulched at the end of each work day and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.
2. Minimum Standard 16.b. The variance to this criteria is not necessary due to Minimum Standard 16.f which allows applicable safety regulations to supercede the Virginia Erosion and Sediment Control regulations.

SECOND: Ms. Hansen

DISCUSSION: Mr. Moyer asked if there was an extension deadline.

Mr. Hill said that companies must submit the application for variance on an annual basis.

Ms. Doetzer clarified that this meant companies must bring this before the Board annually.

Ms. Packard asked if there was a possibility that, based on OSHA regulations, companies would not have to return each year with the request.

Mr. Hill said that staff would look into that option.

Ms. Packard suggested that staff look at OSHA regulations and that state regulations be conformed to provide a permanent variance.

Mr. Maroon noted that the amount of regulations the Department was dealing with was overwhelming. He said that DCR was aware that these regulations needed revisions.

VOTE: Motion carried unanimously.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the review of the 2005 annual standards and specifications for the Virginia Telecommunication Industry Association and that the Board concur with staff recommendations for the conditional approval of the 2005 standards and specifications and the request for variances in accordance with the Erosion and Sediment Control Law.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction in 2005 must be submitted by June 10, 2005. The following information must be submitted for each project:
  - Project name (or number)
  - Project location (including nearest major intersection)
  - On-site project manager name and contact information
  - Project description
  - Acreage of disturbed area for project
  - Project status and finish dates
2. Project information unknown prior to June 10, 2005 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address [linearprojects@dcr.state.va.us](mailto:linearprojects@dcr.state.va.us).
3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in advance of land disturbing activities by e-mail at the following address [linearprojects@dcr.state.va.us](mailto:linearprojects@dcr.state.va.us). The information to be

provided is name, contact information and certification number.

4. Install and maintain all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

Variances were requested for Minimum Standard 16.a and Minimum Standard 16.b. The responses to the requests for the variances are as follows:

1. Maintain Standard 16.a. The project may have more than 500 linear feet of trench length open at one time provided all open trenches in excess of 500 feet are adequately backfilled, seeded and mulched at the end of each work day and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.
2. Minimum Standard 16.b. The variance to this criteria is not necessary due to Minimum Standard 16.f which allows applicable safety regulations to supercede the Virginia Erosion and Sediment Control regulations.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

### **Stormwater Management Program Update and Motion to Initiate a Regulatory Action**

Mr. Hill gave an overview of current status of general permits and staffing for the stormwater management program.

He reminded members that on January 29, 2005, DCR and the Soil and Water Conservation Board became responsible for the permitting of construction related land disturbing activities. Land disturbances greater than one acre require a Virginia Stormwater Management permit. In the Chesapeake Bay Preservation Area, disturbances greater than 2,500 square feet require a permit.

Mr. Hill noted that, at the time of the Board meeting, he had signed 460 permits since January 29, 2005.

He noted that DEQ on average issue 1100 per year. DCR is averaging about 125 per month. Those numbers are expected to climb.



Mr. Moyer asked if localities were enforcing this requirement.

Mr. Hill said that localities were enforcing the permit requirement, and noted that was the basis for the increase.

Mr. Hill said that there are 15 new staff positions for the program. Hiring in the central office is complete. Field staff recruitment has been completed.

Mr. Dowling presented two motions for Board consideration. He said that staff talked with the Attorney General's office and received guidance that some of the regulatory modifications will need to go through the full APA process.

HB1177 was envisioned to be a two-phased approach to the implementation of stormwater management. The first phase was moving the program from DEQ to DCR. That phase is completed.

The second phase for the construction permits is to move their implementation to the local level. The regulations need to be constructed to show what a local stormwater program should look like. The motions to initiate these regulatory actions were as follows:

**Motion to authorize and direct the filing of Notice of Intended Regulatory Actions (NOIRA) related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations and other associated actions:**

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare and submit a NOIRA or NOIRAs to consider changes and solicit recommendations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations. The changes may include, but not be limited to, development of the elements of a local stormwater management program and model ordinance, amendments to the technical criteria for a stormwater management program, modifications of fees associated with the implementation of a stormwater management program, and other technical amendments necessary to improve and clarify the regulations. As part of this process, the Board further authorizes a public meeting(s) to be held by the Department not less than 30 days after publication of the NOIRA(s) in the Virginia Register of Regulations, that a technical committee(s) be established to make recommendations to the Director and the Board on potential regulatory changes, that the Department hold other stakeholder group meetings as it deems necessary, and that the Department prepare a draft proposed regulation(s) for the Board's review and consideration.

This authorization is related to those changes that are subject to the Administrative Process Act and to the Virginia Register Act. The Department shall follow and conduct actions in accordance with the Administrative Process Act, the Virginia Register Act, the Board's Regulatory Public Participation Procedures, the Governor's

Executive Order 21 (2002) on the “Development and Review of Regulations Proposed by State Agencies,” and other technical rulemaking protocols.

This authorization extends to, but is not limited to, the drafting and filing of the NOIRA(s), the holding of public meetings, the development of the draft proposed regulation and other necessary documents and documentation as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, and the Virginia Registrar of Regulations.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings and for the Department to work with the Board’s Stormwater Management subcommittee during the regulatory process as deemed appropriate.

Motion made by: Mr. Graham

Motion seconded by: Ms. Packard

Action: Motion carried unanimously.

**Motion to amend the Board’s Virginia Stormwater Management Program (VSMP) Permit Regulations to remove the out-of-date Best Management Practices (BMP) nutrient removal efficiency information:**

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare those changes necessary to bring the Board’s Virginia Stormwater Management Program (VSMP) Permit Regulations, including any attendant forms, into conformance with non-discretionary changes required pursuant to Chapter 102 of the 2005 Virginia Acts of Assembly (HB2365). Enactment clause #3 specifies that “The Director of the Conservation and Recreation shall amend the Stormwater Management Regulations by removing the out-of-date Best Management Practices (BMP) nutrient removal efficiency information and adding it into the Virginia Stormwater Management Handbook guidance document where it will be more efficiently updated for public use.

This authorization is for those changes that are exempt from the Administrative Process Act and are subject only to the Virginia Register Act.

This authorization extends to, but is not limited to, the drafting of the necessary regulatory amendments, and other necessary documents and documentation as well as the coordination necessary to gain approvals from the Secretary of Natural Resources, the Attorney General, and the Virginia Registrar of Regulations.

The Board suggests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

Motion made by: Ms. Packard

Motion seconded by: Mr. Graham

Action: Motion carried unanimously.

### **District Director Resignations and Appointments**

Mr. Frye presented the following list of District Director Resignations and Appointments.

#### *Lord Fairfax*

Resignation of Marc Montoni, Shenandoah County, effective 4/14/05, elected director position (term of office expires 1/1/08).

Recommendation of Morgan Lauck Walton, III, Shenandoah County, to fill unexpired elected term of Marc Montoni (term of office to begin on or before 6/18/05 – 1/1/08).

#### *Southside*

Resignation of William V. Purcell, Charlotte County, effective 5/9/05, elected director position (term of office expires 1/1/08).

Recommendation of Eugene Morris, Charlotte County, to fill unexpired elected term of William V. Purcell (term of office to begin on or before 6/18/05 – 1/1/08).

MOTION: Mr. Maitland moved that the list of District Director resignations and appointments be approved as submitted.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

### **Potential Changes in District Implementation of Cost Share Programs**

Mr. Frye gave an overview of the potential changes in District implementation of Cost Share Programs. He distributed two handouts, including a draft grant agreement. Copies of these documents are available from DCR.

**Changes under consideration  
To Virginia Agricultural Best Management Practices  
Cost-Share Program for program year 2006**

1. Change the BMP cost-share program eligibility to require the production of agricultural products for market, a history of \$1000 per year of gross receipts from agricultural, horticultural or forest products produced on the property for five consecutive years, and five contiguous acres.
2. Within the Chesapeake Bay drainage basin change the allocation process to utilize the Chesapeake Bay Tributary Strategies Input decks as an allocation tool for a portion of the Chesapeake Bay drainage basin cost-share allocations. Allocations will be made on a county level rather than watershed level.
3. Remove the restrictions on cost-share approval across watersheds to allow approval of cost share anywhere within the district's boundaries; CB and SR funds must be tracked separately.

Mr. Moyer asked if the committee was proposing to bring this back for Board approval.

Mr. Frye said that the Director has the final authority for approval.

Mr. Maroon said that he absolutely wanted Board input prior to adopting changes. He asked members with additional comments to forward them to his attention within the next two weeks.

Mr. Frye reviewed the draft grant agreement. He said that DCR is hoping to sign two-year agreements with districts.

Mr. Moyer said that would be helpful to Districts in terms of planning.

**Review of Draft WQIA Grant Guidelines**

Mr. Frye gave a review of the draft Water Quality Improvement Act Guidelines. He distributed two handouts; Section A, Nonpoint Source Projects and Section B, Point Source Projects. Copies of these documents are available from DCR.

The guidelines are currently open for a 60-day public review. They are the responsibility of the Secretary of Natural Resources with support from DCR and DEQ. Information

concerning the guidelines and the comment period may be found on the Secretary of Natural Resources website as well as the DCR and DEQ websites.

### **Briefing on Ad Hoc Dam Safety Study Committee Report – Institute of Environmental Negotiations**

Mr. Browning introduced Bruce Dotson and Frank Dukes with the Institute of Environmental Negotiations (IEN). He also recognized Joe Haugh, member of the Ad Hoc Committee and former DCR Dam Safety Director.

Mr. Dukes said that IEN was contracted to provide facilitation for the committee. The committee had 13 members representing a variety of different backgrounds. The committee met four times from November through April with a charge to complete their deliberations by April 30, 2005.

During that time period the committee identified information needs. At each meeting the opportunity was provided for public comment. The committee considered four options and came up with consensus recommendations about two possible alternatives.

Mr. Dotson presented the final report for the Ad Hoc Committee on Dam Safety. A copy of the complete PowerPoint presentation is available from DCR. Report highlights are as follows:

#### **Motion of the Virginia Soil and Water Conservation Board July 15, 2004**

That the Virginia Soil and Water Conservation Board establish an Ad Hoc Committee for the expressed purpose of studying the Classes of Impounding Structures, § 4 VAC 50-20-40 and Performance Standards Required for Impounding Structures, § 4 VAC 50-20-50 and the attendant Table 1 established in the 2004 Virginia Impounding Structures Regulations. The Committee membership shall be set by the Department of Conservation and Recreation with concurrence of the Board Chairman. The Committee shall complete its work by April 30, 2005

#### **Definitions for Spillway Design**

The spillway design flood (SDF) represents the largest flood that need be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated in the regulations, the magnitude that most closely relates to the involved risk should be selected.

PMF: Probable maximum flood. This means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that

are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, NOAA.

### **Alternatives Assessed by the Committee**

- 1: Treat New & Existing Dams Alike – Formalize Current Practice
- 2: Provide an Alternate Procedure for Existing Dams
- 3: Reduce SDF to a Percentage of PMF
- 4: Develop a Risk-based Approach

### **Committee Position on the Four Alternatives**

Alternative	Strong Agreement	Agreement	Disagreement
1 - Treat New & Existing Dams Alike	3	8	0
2 – Alternate Procedure for Existing Dams	5	6	0
3 – Reduced % of PMF	0	8	3
4 – Risk-based Approach	0	1	10

### **Alternative 1 - Treat New & Existing Dams Alike**

#### Advantages

- reinforces existing practice
- simple risk classification
- provides some latitude for existing dams under appropriate circumstances
- clear criteria and predictability
- equally protective of public/property below both new and existing dams
- consistent with USDA/NRCS practices

#### Disadvantages

- spillway upgrade required for some existing dams
- less responsive to site and situation variations than some alternatives

### **Alternative 2 – Alternate Procedure for Existing Dams**

Advantages

- an extension of existing authority under Section 130
- allows consideration of non-structural as well as structural factors
- gives credit for outstanding record of performance
- sensitive to site and situation variations among dams
- would likely result in lowered SDF for some dams

Disadvantages

- provides less certainty than current practices
- considerably more field monitoring
- significant increase in staff time and resources

NOTE: staff, possibly with selected members of the committee, would need to flesh out the details and criteria if alternative 2 were chosen

**Alternative 3 – Reduced % of PMF**

Advantages

- responsive to cost and other concerns of some existing dam owners
- retain simplicity of a structural standard
- reflect a compromise among competing concerns for cost and safety

Disadvantages

- lack of technical basis for any particular reduction
- reduction would be somewhat arbitrary – reflecting a compromised position
- inconsistent levels of protection (new vs. existing)
- a given fractional part of PMF has widely different return periods depending on location and climatology

**Alternative 4 – Risk-based Approach**

Advantages

- based upon site and situation specific factors, not a one size fits all approach
- could be less risky than PMF in the case of exemplary dam owners/practices
- could save money for some extremely diligent owners

Disadvantages

- lack of experience or accepted practice to guide risk based design
- developing risk based criteria would be complex, data intensive, could take years and require expertise not readily available
- increased supervision/ inspection of operation and maintenance, emergency action plan etc.

**Larger Recommendations. Land Use and Dam Relationship**

- There is a crucial need for dams and development (both up and down stream) to be considered in relation to each other.
- The downstream potential inundation area needs to be made a matter of public record to promote greater awareness of the impacts of a dam failure on the part of the dam owner and on the part of those downstream.
- Land use zoning needs to be adopted or adjusted to take the inundation area into account.
- Permit applicants for new hazard Class II and III dams should be encouraged to anticipate future development and design spillway facilities in accordance with likely future land use patterns.

**VSWCB questions**

The Virginia Soil and Water Conservation Board asked the committee to focus on the following questions.

1. Is the PMF the best view of reality?
2. What level of loss of life and/or property is acceptable for Virginia to require a full PMF?
3. Are other states enforcing full PMF?
4. If we allow for less than full PMF, will the professional engineering community put their seal on it?
5. Should our Class I dams continue to require PMF engineering design or are their circumstances under which less than full PMF would be sufficient? What are those?
6. In what situations might a Risk-based or % of PMF be applicable?



7. Has any state adopted a risk-based standard? What is their experience?
8. What enforcement tools do states with risk-based approaches have? What additional operational requirements would the dam owners be willing to accept? What added enforcement authorities would DCR and the Soil and Water Board need?
9. What other states have modified their requirements? What has been their experience and is most applicable to Virginia?
10. Funding assistance – what states have done it well?
11. Could we require (for an alternative approach of any kind) that the dam owner have a written binding agreement from the locality to address in perpetuity downstream development, easements, etc.?
12. Is new upstream development with increased runoff a concern parallel to the concern for new downstream development? Neither may have been taken into account at the time a dam was designed.
13. What would be the ramifications of changing the regulatory requirements for those who have already upgraded their facilities or those in the pipeline preparing to do so?

#### **Alternatives Recommended for Board Consideration**

<b>Alternative</b>	<b>Strong Agreement</b>	<b>Agreement</b>	<b>Disagreement</b>
1 – Treat New and Existing Dams Alike	3	8	0
2 – Alternate Procedure for Existing Dams	5	6	0

Mr. Moyer asked for comments from committee members present.

David Campbell of Schnabel Engineering said that he enjoyed participating on the committee. He said that the committee felt that both alternatives 1 and 2 met the technical criteria that the committee focused on. He said that from this point is was a policy and legislative issue that deals with the protections afforded the people of Virginia.

Ms. Hansen said that she wanted to clarify the size of dams under consideration, including those that pose a threat to human life.

Mr. Dotson said that was answered partially by referring to the report. The chart currently shows 126 Class I dams. 109 of those were built prior to 1982. Of those 109, 67% would be required, based on size, to comply with full PMF. About 35 are currently out of compliance.

Ms. Hansen noted that about 30 dam owners would have to come up with sizable amounts of money for the upgrades.

Mr. Browning said the actual costs were not known. He said that staff will need to work with each individual dam owner. He noted that there were probably about 1,000 dams of which the staff was not aware.

Mr. Haugh said that development downstream of dams has been an issue for over forty years. He said that many times dams were built to reduce flooding for agricultural purposes, then downstream development took place.

Mr. Haugh said it needs to be made a matter of public record that the Board is attempting to deal with this issue.

Mr. Maitland said that counties and cities are not considering flood control and are building in these areas. He said that a new subdivision downstream should be responsible for picking up part of the cost for the dam renovation. It should be added to the developer's cost.

Mr. Moyer said that his suggestion would be that the Board accept the report and not act on any individual recommendation. Staff would then be directed to review these recommendations and look at the overall plan.

Ms. Hansen said that she was interested in knowing more about the legalities and property issues as well as some cost sharing alternatives. That would include any cost shifting procedures and who would bear the burden.

Mr. Maroon said that if the Board was comfortable with Mr. Moyer's suggestions, staff will be prepared to come back at the next meeting to give an overview of what alternatives one and two would look like.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept the report of the Ad Hoc Dam Safety Study Committee and direct staff to provide further information regarding alternatives one and two at the July meeting.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Maroon noted that Appendix A of the Ad Hoc Committee report was sent out to all committee members. They signed off on responses as they were written.

[At this time the Board recessed briefly for a working lunch.]

Mr. Moyer called for public comment.

Mr. Lee Frame, Lake of the Woods, gave the following comments:

My name is Lee Frame and I am a resident at Lake of the Woods

1. We strongly support Alternative 2 of the Ad Hoc Committee's recommendations. This alternative approaches public safety from multiple aspects, not just spillway capacity. It includes good operation and maintenance, emergency planning, training and exercises, warning systems, and discouraging development in the inundation zones. An approach similar to highway safety where you not only design and build roads that are safe, but you establish safety standards for automobiles, do auto safety inspections and enforce traffic safety laws. With Alternative 2, we feel that you can get better public safety than just pouring more concrete.
2. With Alternative 1, there is no incentive for the dam owner to discourage additional downstream development. If a few buildings result in a classification change to Class I, and the dam owner is forced to increase spillway size to full PMF, then it really doesn't make any difference to him if there are a few buildings, a few hundred or few thousand buildings. Alternative 2 provides incentives for the dam owner to limit inundation zone development because his ability to argue PMF equivalent safety depends on his ability to reasonably evacuate downstream areas if heavy precipitation threatens the dam. More people and more property value would require the dam owner to spend money on spillway upgrades. Reducing downstream development would provide greater public safety for all dam failure situations, not just overtopping to insufficient spillway capacity.
3. Your Board has indicated in its questions to the Ad Hoc Committee that you are concerned about enforcement. We feel that Alternative 2, with its default position of a full PMF spillway, gives dam owners a strong financial incentive to actively and in good faith comply with all of the conditions of their operation and maintenance certificate. It encourages being actively involved in ensuring public safety. If he doesn't comply, he has to spend the considerable money to increase his spillway size.
4. Finally, thousands of tons of concrete for a full PMF spillway wastes lots of resources, not just for private dam owners, but for public entities that would have to use public funds. We are at a point where we get marginal improvements in public safety for the considerable money spent. We are at a point of diminishing returns with engineering solutions. Spending resources in other areas of dam safety such as downstream development control, warning systems and emergency exercises appear more cost effective. Public safety for dams has been the province of engineers and we now need to address dam safety more broadly.

Mr. John Bailey, General Manager for Lake of the Woods, gave the following comments:

To supplement and add to the Ad-Hoc Committee's points regarding this alternative, we make the following comments:

- \* Alternative 2 provides the Commonwealth with more leverage on dam owners. The burden of providing information to justify a reduction in the Spillway Design Flood (SDF) would be solely upon the owner. Such efforts could only be successfully pursued, as stated in the report, by "educated and responsive dam owners."
- \* The Commonwealth also improves the process of ensuring public safety with Alternative 2 in ways that Alternative 1 does not. Alternative 2 provides a reason for dam owners to increase their awareness of safety considerations, to pursue land-use/zoning progress with regard to preventing development in inundation zones, and puts teeth in the Emergency Action Plan requirement.
- \* Alternative 2, and for that matter any approach, should call for the Board to pursue additional funding for the Division of Dam Safety. With facility upgrades for dams potentially costing millions of dollars in private money and public tax dollars, the Commonwealth would certainly be justified in increasing funding by several hundred thousand dollars to ensure that good public policy can actually be carried out and that it be done at an overall savings to the citizens of the State.
- \* Last, quite simply, Alternative 2 provides for better public policy and will truly serve to enhance public safety.

Mr. Chris Allison, Lake Holiday Board Present made the following comments:

Lake Holiday is located in the northwestern tip of Virginia. The community has 2,700 lots, 1,800 members and 600 assessment paying members. The lake has a Class I dam.

Lake Holiday agrees with the comments made by both gentlemen from Lake of the Woods.

The cost Lake Holiday is looking at, not including what happens in 2008 and 2009, would be somewhere between four and five million dollars.

If there are no other options, the association needs some reasonable method for funding necessary work.

A group of 750 families will have to come up with \$4-5 million through a special assessment.

Mr. Maroon asked for a clarification from Mr. Browning regarding an association that funded the necessary work on their dam through a yearly assessment and long term financing.

Mr. Browning said that Lake Caroline was able to obtain a 20-year low interest loan.

Mr. Moyer noted that the costs for the Lake Caroline work were lower than originally projected.

Mr. Allison said that Delegate Beverly Sherwood had sponsored legislation that would build the framework for funding. However no funds have been allocated.

### **Dam Safety Certificates and Permits**

Mr. Browning presented the following Dam Safety Certificates and Reports. He gave members an overview of the process and distributed forms and information provided to dam owners. A copy of this information is available from DCR.

There was no action necessary on the Out of Compliance dams. A copy of the list of nine dams found out of compliance is available from DCR.

Mr. Browning presented the following Operation and Maintenance Certificate Recommendations.

00382	Peter-Jefferson Place Lake I	ALBEMARLE	Class III Conditional 5/31/06
00385	Mountain Valley Dam I	ALBEMARLE	Class III Conditional 5/31/07
01701	Douthat	BATH	Class I Regular 5/31/11
04906	Pearsall	CUMBERLAND	Class III Regular 5/31/11
05933	Crippen	FAIRFAX	Class II Conditional 5/31/06
07305	Cow Creek	GLOUCESTER	Class II Regular 5/31/11
08548	Charter Lake	HANOVER	Class II Regular 11/30/05
08906	Leatherwood Creek #4	HENRY	Class III Regular 5/31/11
13701	Lake of the Woods	ORANGE	Class I Conditional 11/30/05
13901	Dry Run #102 (Lake Morningstar)	PAGE	Class I Conditional 5/31/07
16301	Goshen	ROCKBRIDGE	Class I Conditional 5/31/07
16503	Lower North River #83 (Hone Quarry)	ROCKINGHAM	Class I Conditional 5/31/07
16507	Lower North River #82	ROCKINGHAM	Class I Conditional 5/31/05

Mr. Browning noted that separate actions were needed regarding Charter Lake Dam and Lake of the Woods Dam.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board rescind its March 17, 2005 action, the issuance of a six year (03/17/2001 – 03/31/2011) Regular Class II, Operation and Maintenance Certificate for Charter Lake Dam, Inventory Number 08548 and issue an eight month (03/17/05 – 11/30/05) Conditional Class II, Operation and Maintenance Certificate for Charter Lake Dam, Inventory Number 08548, so the owner can remove the trees from the embankment of Charter Lake Dam, Inventory Number 08548.

SECOND: Mr. Graham

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept the progress that the Lake of the Woods Association has made on the conditions contained in the Conditional Class I, Operation and Maintenance Certificate issued by the Board on July 15, 2004 for the period 07/15/04 – 04/30/05 for Lake of the Woods Dam, Inventory Number 13701. Based on a review of the contents of the Association's April 29, 2005 letter and accompanying owner engineering documents the Board issues the LOWA a seven month Conditional Class I, Operation and Maintenance Certificate (05/01/05 – 11/30/05) for Lake of the Woods Dam, Inventory Number 13701. The Conditional Certificate requires the LOWA to: (1) prepare and submit not later than September 30, 2005 a bid ready engineering design and/or designs, plans and specifications with an Alteration Permit Application for an increased spillway capacity to safely pass the full PMF and (2) provide not later than October 17, 2005, a Financial Plan and Project Completion Schedule for the implementation of the design and/or designs, plan and specifications submitted to satisfy item number (1) of this motion.

SECOND: Mr. Graham

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the remaining Operation and Maintenance Certificate Recommendations as presented by DCR staff with the exception of

Inventory #01701, Douthat Dam and that staff be directed to communicate the Board actions to the affected dam owner.

SECOND: Mr. Graham

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Mr. Graham moved that the Virginia Soil and Water Conservation Board approve the Operation and Maintenance Certificate recommendation for Inventory #01701, Douthat Dam and that staff be directed to communicate the Board action to the affected dam owner.

SECOND: Ms. Hansen.

VOTE: Motion carried with Mr. Maroon abstaining.

Mr. Browning presented the following Permit Recommendations:

00385	Mountain Valley Dam 1	ALBEMARLE	Class III Alt.	5/19/05-5/31/07
00386	Mountain Valley Dam 4	ALBEMARLE	Class III Const.	5/19/05-5/31/07
15330	Market Center Pond 1	PRINCE WILLIAM	Class I Const.	5/19/05-5/31/07
15332	Innovation at Prince William	PRINCE WILLIAM	Class I Const.	5/19/05-5/31/07
17711	Grant Lake	SPOTSYLVANIA	Class II Regular	5/19/05-5/31/07

MOTION: Mr. Graham moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owner.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously.

Mr. Browning presented the following list of extension recommendations:

00351	Peacock Hill	ALBEMARLE	Class III Regular	09/30/05
01509	South River #6 (Senger's Mtn. Lake)	AUGUSTA	Class I Conditional	12/31/05



05907	Pohick Creek #8	FAIRFAX	Class I Conditional	09/30/05
05922	Pohick Creek #4	FAIRFAX	Class I Conditional	09/30/05
05928	Pohick Creek #3	FAIRFAX	Class I Conditional	09/30/05
06107	Thompson	FAUQUIER	Class I Conditional	09/30/05
06122	Lake Brittle	FAUQUIER	Class II Regular	09/30/05
06515	Andersons	FLUVANNA	Class III Regular	09/30/05
06523	Camp Friendship	FLUVANNA	Class III Regular	09/30/05
07523	Bowles	GOOCHLAND	Class III Regular	07/31/05
08910	Lanier	HENRY	Class II Conditional	07/31/05
12703	Diascund	JAMES CITY/ NEW KENT	Class I Regular	07/31/05
14104	Squall Creek	PATRICK	Class III Regular	12/31/05
14513	Recreation Pond	POWHATAN	Class III Regular	07/31/05
17301	Hungry Mother	SMYTH	Class I Regular	09/30/05
80003	Lake Burnt Mills	SUFFOLK	Class I Conditional	09/30/05
80011	Western Branch	SUFFOLK	Class I Conditional	09/30/05

Mr. Browning noted that actions for #08910 Lanier and # 17301 Hungry Mother, would need to be taken separately.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board issue a four month (03/17/05 – 07/31/05) extension to the existing Conditional Class II, Operation and Maintenance Certificate for Lanier Dam, Inventory Number 08910, to give the owner time to complete the preparation of the application packet for a Operation and Maintenance Certificate renewal.

SECOND: Mr. Johnson

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the remaining extension recommendations as presented by DCR staff, with the exception of Inventory #17301 Hungry Mother Dam and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Maitland

DISCUSSION: None

VOTE: Motion carried unanimously.



- MOTION: Mr. Graham moved that the Virginia Soil and Water Conservation Board approve the extension recommendation for Inventory #17301 Hungry Mother Dam and that staff be directed to communicate the Board action to the affected dam owner.
- SECOND: Mr. Johnson
- DISCUSSION: None
- VOTE: Motion carried with Mr. Maroon abstaining.

Mr. Browning distributed a map showing the Department's inventory of dams. He noted that staff has begun the process of notifying owners when their Regular Operation and Maintenance certificates are about to expire.

Mr. Maroon commended Mr. Browning and his staff for their work.

### **Partner Agency Reports**

#### *Virginia Department of Forestry*

Mr. Foreman presented the following report for the Department of Forestry.

#### **Virginia Department of Forestry**

- The Department of Forestry is developing a draft Forest Policy. Many other states have forest policy statements in their respective law but we do not. The forestry community, including many members of forest industry, believes it is time to elevate the awareness of the importance of forests. We are planning 2 public meetings during the summer. We encourage review of this language by the Board. The draft policy is as follows:
  - *In keeping with Article XI of the Constitution of Virginia, it shall be the policy of the Commonwealth to conserve, protect, and enhance the forest resources of Virginia. The General Assembly determines and finds that these forest resources are essential in providing economic and ecological vitality, protecting the foundation of Virginia's air and water resources, providing habitat for Virginia's wildlife, enhancing recreational opportunities, and improving other significant aesthetic values. Implementation of this policy shall focus on long term public and private forest resource management based upon sound scientific research. The State Forester, in cooperation with other agencies and*

*partners, and with guidance from the Board of Forestry, shall implement this policy through its strategic plan.*

- Also regarding forest policy and land conservation, the Board of Forestry, with assistance from the Department, is responding to Senate Joint Resolution 367 regarding the forest land conservation incentives and the impact of local ordinances on non-industrial private landowners. This is a continuation of SJR 75 from last session. Also, Dr. Mike Mortimer of the College of Natural Resources at Tech is conducting a survey of local governments and their ordinances which will feed into the SJR 367 work.
- The Department put in a proposal to the NRCS Conservation Innovation Grants Program. The proposal was to focus riparian and other tree planting efforts in the Lower Rappahannock watershed. This watershed has not had the same level of CREP plantings as other parts of the Rappahannock. In addition, the Department has been discussing the carbon sequestration issue with the Nature Conservancy and Mirant Corporation and Dominion Power as part of this proposal.
- In conjunction with DEQ, Coastal Program, the Department has received tentative approval for a grant to the Virginia Institute of Marine Science to conduct a survey and trend analysis of Maritime Forests in Virginia. This \$50K grant will begin in October 2005 and last 1 year. There is very little coordinated data concerning these valuable forest types including forests right behind the beach dunes. This study should raise awareness of the value of these types and motivate restoration activity.
- For the first time in nearly 20 years, the Department will have a 2 1/2 day personnel camp at Tech from May 24 through the 26<sup>th</sup>. We have over 50 new employees in the last couple of years and felt we needed to get together. The camp will feature concurrent classes for employees to take as well as a series of presentations from Virginia natural resource leaders.
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#### *Natural Resources Conservation Service*

Ms. Doetzer gave the report for the Natural Resources Conservation Service. A copy is attached as Attachment #2.

#### *Virginia Association of Soil and Water Conservation Districts*

Mr. Byrne gave comments from the Virginia Association of Soil and Water Conservation Districts. He noted that the Association Soil and Water Conservation District Directors is the only organization that is whose members are elected locally, are all volunteer and whose sole job is conservation. The Association focuses on soil and water issues statewide.

Mr. Byrne noted that districts have been working on urban programs. He noted that there is no structure in the general assembly to fund urban programs on a regular basis. There is no spokesperson for stormwater management in the General Assembly.

Mr. Maroon said that it was not the lack of structure in the General Assembly, but that this was the first time there has been a substantial amount of money for water quality issues. At the same time, there is the recognition that it is not enough.

Mr. Maroon said the fastest improvements in water quality with the available dollars can be made through agriculture.

The Department is working to develop an urban program.

Ms. Doetzer noted that NRCS does have some staff in urban areas. However, urban stormwater management is not included in the NRCS mission.

### **Other Business**

Mr. Moyer said there had been prior discussion concerning the November/December meeting time. He suggested that, rather than a joint meeting at the Association meeting in December that the Board meet in November. The Association can meet with the Board in January.

Consensus was to approve the change in the schedule.

### **Public Comment**

There was no additional public comment.

### **Next Meeting**

The next meeting of the Virginia Soil and Water Conservation Board will be Thursday, July 21 at 9:30 a.m. at the NRCS offices in Richmond.

There being no further business, the meeting was adjourned.

Respectfully submitted,

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David L. Moyer  
Chairman

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Joseph H. Maroon  
Recording Secretary

Attachment #1

**Virginia Department of Conservation & Recreation  
Wednesday, May 18, 2005  
NRCS State Office Conference Room  
SWCD “Study” Steering Team  
Working Agenda**

**1:00 P.M. Begin**

1. Convene group; Introductions (as needed), Desired outcomes for today
2. Brief recap of discussion highlights from the last (March 24) meeting of this group; revisit overall charge for conduct of this study
3. Today’s discussion:
  - Present the status of a SWCD annual report format; discuss future plans for district completion (handout)
  - Revisit the plans for an annual DCR/SWCD Cost-Share grant agreement that commits 2 years of program funding beginning July 1, 2005 (handout)
  - Longer term Ag BMP Cost-Share Program implementation considerations:
    - Nutrient management plan implementation
    - Cover crop and conservation tillage practices
    - Engineering services enhancements needed to deliver state programs
    - Capabilities of SWCD staff with BMP implementation and oversight
  - Areas of focus with agricultural BMP implementation by districts in the coming year
4. Recap –Summarize conclusions; next steps; confirm next meeting date/location/time

**3:30 P.M. Adjourn**

Attachment #2

**Natural Resources Conservation Service  
Report to the Soil and Water Conservation Board  
Thursday, May 19, 2005 - Charlottesville, Virginia**

**Farm Bill Program Activities**

**EARTH DAY** (April 22) was celebrated in Virginia by a visit from NRCS Chief Bruce Knight, on the farm of Ward Burton (2002 winner of NASCAR's Daytona 500) in Halifax County. The media event publicized wetland initiatives on private lands through combined efforts of the Wetland Reserve Program and the Ward Burton Wildlife Foundation, on a wetland restoration project.

- **Farm and Ranchland Protection Program (FRPP)**—The application period for proposals has closed and all proposals have been evaluated. Four proposals were received totaling over 1700 acres. All of the \$1.6 million allocation to Virginia will be approved for funding. The Phillips Farm (Waterford Foundation) permanent easement of 140 acres for \$800,000 will be the first easement signed with a scheduled date of May 22, 2005.
- **Grassland Reserve Program (GRP)**—Sign-up ended on May 15 for the FY 05 program. Twenty-seven applications are being reviewed with approval anticipated in the next week. Funding of \$800,000 will be used both to purchase easements and enter into several long-term protection contracts.
- **Wildlife Habitat Incentive Program (WHIP)**—Sign-up will end very soon for applications for private farm wildlife habitat improvement. Surplus funds will then be used to approve applications for state-owned land that is eligible. Any remaining funds will then be used for cooperative agreements with the VDGIF for project activities to remove stream obstruction, such as old dams.
- **Environmental Quality Incentives Program (EQIP)**—Approximately \$6.0 million was approved during the first evaluation period that ended in March. The second and final period, will end on May 20. There is approximately \$4.0 million in funds remaining with a waiting list estimated to be approximately \$8.0 million.

The steps taken last year to distribute the funding to the four administrative areas rather than one statewide pool has proven successful in that all areas have been able to fund needed animal waste facilities and other high-cost engineering practices.

- **Conservation Security Program (CSP)**—Sign up continues in the three designated watersheds. To date, over 575 field and office contacts have been made with prospective applicants. Staff has completed 81 interviews for the application process, with 73 applicants determined to be eligible. Sign-up continues through May 27.

### **Farm Bill Program Activities (continued)**

**PLANS FOR FY 2006**—Staff has already begun work on the programs for FY-06. It is anticipated that sign-up for all programs will be held the first 3 to 4 months of the fiscal year, with all approvals being completed by mid-winter. This places Virginia in a better position to receive surplus funds from other states.

### **Resource Conservation & Development (RC&D)**

The Virginia Association of RC&D Councils are holding their annual meeting in Petersburg, VA this week. They will be offering training, tours of the South Centré Corridors RC&D and an awards banquet at Pamplin Park.

### **Budget**

The President's FY-06 budget proposes to reduce the Watershed Surveys and Planning Program from \$10-\$15 million per year to \$5.1 million. The Watershed Operations Budget would go from \$80-\$100 million per year to \$0. The Dam Rehabilitation would go from \$28-\$30 million per year to \$15.1 million. RC&D Areas 20 years and older would not be funded and the Grassland Reserve Program would be zeroed. Farm Bill programs slated for an increase include the Conservation Security Program, Wildlife Habitat Incentive Program and Wetland Reserve Program.

### **Dam Rehabilitation**

The first draft of the South River Dam Rehabilitation Plan for three Headwaters SWCD dams will be completed in the next two weeks. This plan includes the installation of articulated concrete blocks to armor the spillways and a parapet wall to raise the height of the dams by 4-5 feet each. The total estimated cost is about \$4 million for all three dams. The federal share is 65% and the local share is 35%.

The construction of the Marrowbone Creek Dam Rehabilitation project began last month. This rehabilitation project includes the installation of a roller compacted concrete spillway through the dam and raising the dam 8.5 feet. The construction should be completed this fiscal year.

### **Watershed Planning and Implementation**

The NRCS Watershed Planning Staff has recently serviced requests for planning assistance for control in the Town of Farmville and the Town of Glasgow. The local sponsors will be submitting Requests for Federal Assistance in the near future. It is unclear if Virginia will receive adequate funding to provide the needed watershed planning assistance to these localities.